

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

NORTHERN ALASKA
ENVIRONMENTAL CENTER, *et al.*,

Plaintiffs,

v.

DEBRA HAALAND, in her official
capacity as Secretary of the Interior,
et al.,

Defendants,

and

AMBLER METALS LLC, *et al.*,

Intervenor-Defendants.

Case No. 3:20-cv-00187-SLG

ORDER RE PLAINTIFFS' MOTION FOR JUDICIAL NOTICE

Before the Court at Docket 102 is Plaintiffs' Motion for Judicial Notice. Federal Defendants filed a response in opposition at Docket 105 and the Intervenor-Defendants filed a response in opposition at Docket 106. Plaintiffs filed a reply in support of the motion at Docket 107.

Plaintiffs seek to have this Court take judicial notice of a Technical Review document prepared by the EPA and submitted to the U.S. Army Corps of Engineers regarding the Pebble Mine project; Plaintiffs indicate that they obtained the document in March 2019 through a Freedom of Information Act request.

The request to take judicial notice of this document is DENIED. See *generally Rybachek v. U.S. EPA*, 904 F.2d 1276, 1296 n.25 (9th Cir. 1990) (construing motion to take judicial notice of comments made by entities criticizing challenged regulations as motion to supplement record and denying motion because “[j]udicial review of agency actions should generally be confined to the original record upon which the actions were based,” and finding no exception applied). In the Court’s view, Plaintiffs’ assertion that they do not intend to use the document to attack the Ambler Clean Water Act 404 permit is at odds with what Plaintiffs have asserted is the document’s relevancy to this proceeding: to “demonstrate that EPA has raised concerns to the Corps regarding its compensatory mitigation approach in Alaska.”¹

DATED this 10th day of February, 2022, at Anchorage, Alaska.

/s/ Sharon L. Gleason
UNITED STATES DISTRICT JUDGE

¹ Docket 102 at 4.